

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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In re:	:	Chapter 11
	:	Case No. 12-51502-659
	:	(Jointly Administered)
PATRIOT COAL CORPORATION, et al.	:	:
	:	Hearing Date:
	:	April 23, 2013 at 10:00 a.m.
	:	(prevailing Central Time)
Debtors.	:	:
	:	Hearing Location:
	:	Courtroom 7 North

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**JOINDER OF BANK OF AMERICA, N.A., AS SECOND OUT DIP AGENT,
TO DEBTORS' OBJECTION TO MOTION OF AURELIUS CAPITAL
MANAGEMENT, L.P., AND KNIGHTHEAD CAPITAL MANAGEMENT, LLC,
FOR ENTRY OF AN ORDER, PURSUANT TO 11 U.S.C. §§ 105(a)
AND 1104(a), DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE**

Bank of America, N.A., in its capacity as administrative agent (in such capacity, the “Second Out DIP Agent”) for itself and the other lenders under that certain Amended and Restated Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of July 11, 2012 (“Second Out DIP Credit Agreement”), by its undersigned counsel, hereby submits this joinder to the Debtors’ Objection [Dkt. No. 3675] (the “Objection”) to the Motion of Aurelius Capital Management, LP, and Knighthead Capital Management, LLC (“Movants”), for Entry of an Order, Pursuant to 11 U.S.C. §§ 105(a) and 1104(a), Directing the Appointment of a Chapter 11 Trustee [Dkt No. 3423] (the “Motion”).

JOINDER

The Second Out DIP Agent supports and joins in the Objection. The Movants have offered only conclusory arguments and absolutely no evidence to support their request for appointment of a trustee for the Non-Obligor Debtors (as defined in the Motion). Such drastic relief is neither required nor warranted under section 1104 of the Bankruptcy Code.

Conspicuously absent from the Motion is any reference to the fact that the appointment of a trustee is an Event of Default under both the First Out DIP Credit Agreement (as defined in the Final DIP Order (as defined below)) and the Second Out DIP Credit Agreement (collectively, the “DIP Credit Agreements”). Appointment of a trustee would be an extraordinary change in circumstances from those agreed to by the DIP Lenders (as defined in the Final DIP Order) and approved by the Bankruptcy Court in the *Final Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Pre-Petition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* [Docket No. 275] (the “Final DIP Order”). These changed circumstances would include a “new borrower” and two separate sets of joint and several obligors that are controlled by different and unrelated parties: the debtors in possession (controlling the Obligor Debtors (as defined in the Motion)) and a separate trustee (controlling the Non-Obligor Debtors).¹ It is unreasonable to assume that the requisite DIP Lenders would waive this Event of Default and continue to provide financing under such unanticipated and unworkable circumstances.

If the Movants prevail on their Motion and a trustee is appointed, the DIP Agents (as defined in the Final DIP Order) will also have the right to refuse further funding of the Debtors’ operations, accelerate the Debtors’ obligations to repay the loans in full under the DIP Credit Agreements and exercise remedies against virtually all of the Debtors and their assets. Since the DIP Obligations must be paid in full before Movants or other unsecured creditors may receive

¹ All Debtors that have material assets (which includes all but one of the Non-Obligor Debtors) are jointly and severally liable for the obligations under the DIP Credit Agreements (the “DIP Obligations”).

any distribution on account of their claims, it is difficult to imagine how these consequences would serve the best interests of the Movants, let alone any other parties in interest. The Movants' failure to address the negative implications of the relief they seek displays either a misunderstanding of the facts or a dangerous decision to ignore them.

For the reasons set forth in the Objection and herein, the Second Out DIP Agent respectfully requests that this Court overrule the Motion. The Second Out DIP Agent reserves the right to supplement its joinder by oral argument at the hearing on the Motion.

Dated: Clayton, Missouri
April 16, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via the Court's CM/ECF system on all parties receiving ECF notices in this case on the 16th day of April, 2013.

/s/Laura Toledo